

### **REMARKS**

The Applicants have now had an opportunity to carefully consider the comments set forth in the Office Action mailed June 28, 2006. All of the rejections are respectfully traversed. Reexamination and reconsideration of the application in light of the following comments are respectfully requested.

#### **The Office Action**

In the Office Action mailed June 28, 2006:

**claims 1-9 and 25-29** were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,930,700 to Pepper, et al. ("Pepper") in view of U.S. Patent No. 5,826,185 to Wise, et al. ("Wise");

**claims 10-15 and 30** were rejected under 35 U.S.C. 103(a) as being unpatentable over Pepper in view of U.S. Patent No. 6,564,047 B1 to Steele, et al. ("Steele");

**claims 6-18 and 21-24** were rejected under 35 U.S.C. 103(a) as being unpatentable over Pepper in view of Steele and further in view of Wise; and

**claims 19 and 20** were rejected under 35 U.S.C. 103(a) as being unpatentable over a combination of four references, Pepper, Steele, Wise and U.S. 6,745,025 to Chow, et al. ("Chow").

#### **The Office Action is not Completely Responsive**

The present Office Action repeats some of the rejections presented in the Office Action of February 22, 2006. For example, claims 10-15 and 30, 16, 18 and 21, and claims 19 and 20 were rejected for the same reasons as those presented in both the Office Action of July 14, 2005 and the Office Action of February 22, 2006. However, neither the previous Office Action nor the present Office Action respond or reply to the arguments presented in Applicants' Amendments A and B related to these claims, or indicate why those arguments were not persuasive. Therefore, it is respectfully submitted that the Applicants have been denied an opportunity to consider the position of the Office and to provide rebuttal arguments and/or amendments.

#### **The Claims are not Obvious**

**Claims 1-9 and 25-29** were rejected under 35 U.S.C. 103(a) as being unpatentable over Pepper in view of Wise.

In explaining the rejection of **claim 1**, the Office Action stipulates that Pepper fails to disclose screening calls based on a current cost of message units and relies on column 1, line 16 - column 2, line 10, of Wise for this disclosure. However, it is respectfully submitted that the cited portion of Wise is related to a user or subscriber placing a call and not to screening incoming calls. Moreover, the cited portion of Wise discusses checking to see whether the user's account has any air time available and is unconcerned with the cost of air time. If the user's account includes any air time at all, the user is allowed to place a call (column 2, lines 3-10).

For at least the foregoing reasons, it is respectfully submitted that **claim 1**, as well as **claims 2-9**, which depend therefrom, is not anticipated and is not obvious in light of Pepper and Wise.

Additionally, since Wise is not concerned with screening incoming calls, Wise is non-analogous art with respect to the claims of the present application. Furthermore, since Wise is not concerned with screening incoming calls, there is no motivation in the art to combine aspects of the disclosure of Wise with aspects of the disclosure of Pepper. Accordingly, **claim 1**, as well as **claims 2-9**, is not anticipated and is not obvious in light of Pepper and Wise.

Additionally, regarding **claims 7-9**, the Office Action simply asserts that the combination of Pepper and Wise discloses the subject matter of **claims 7-9** and directs the attention of the Applicants generally to FIGS. 2E and 2F of Wise in support of the assertion. However, FIGS. 2E and 2F of Wise are related to determining if a caller should be allowed to place a call and to charging the caller appropriately if the caller places the call and are unrelated to screening a call based on a cost of air time. Furthermore, with particular reference to **claim 9**, even if FIG. 2E suggests determining whether a call should be charged at a local, long distance or international rate, this determination is not made for the purpose of determining whether or not an incoming call should be screened or connected to a called party. Instead, it is respectfully submitted that FIG. 2E is directed toward determining a rate for charging for an outgoing call.

For at least the foregoing additional reasons, it is respectfully submitted that **claims 7-9** are not anticipated and are not obvious in view of Pepper and Wise.

With regard to **claim 25**, the Office Action appears to stipulate that Pepper fails to disclose a message unit conservator operative to determine a current message unit ration state based on a current cost of message units to the subscriber and a call

processor operative to process a call request of the calling party based on the determined current message unit ration state and relies on the Abstract and column 1, line 50 - column 2, line 10, of Wise for this disclosure. However, the Abstract of Wise explains that Wise is related to a cellular phone system in which a cellular phone user (CPU) has a cellular phone with a predetermined amount of available air time. The CPU prepay for a particular number of air time units. When a cell site receives a call **from the CPU**, the cell site communicates with a mobile telecommunications switching office (MTSO) which recognizes a unique serial number from the cellular phone. The MTSO directs the call to a prepaid air time transaction tracking interface (PATTI). The PATTI then checks whether the CPU's account has any available air time units and may indicate the number of units to the CPU. If none, the PATTI does not answer the call (from the user (CPU)); otherwise, the PATTI connects the call (from the user (CPU)) and deducts air time units until the call is disconnected. It is respectfully submitted that nothing in this discussion of determining if a caller placing an outgoing call has air time units available discloses or suggests conserving message units or conserving message units according to a determined current message unit ration state based on a current cost of message units to the subscriber. The system of Wise allows a user to place a call if prepaid air time units are available and does not allow a user to place a call if prepaid air time minutes are not available. Wise is not concerned with the cost of air time minutes. Moreover, Wise is not concerned with screening incoming calls.

Column 1, line 50 - column 2, line 10, are directed to a user (CPU) initiating a phone call by pressing the send button on the cellular telephone (column 1, lines 58-59). The cited portion of Wise is not concerned with screening incoming calls. Moreover, the cited portion of Wise is not concerned with conserving air time. Instead, Wise is only concerned with the presence or absence, availability or unavailability or prepaid air time. Accordingly, the combination of Pepper and Wise does not disclose or suggest the subject matter of independent **claim 25**. Furthermore, there is no motivation in the art for making the combination suggested by the Office Action. Wise is unrelated to screening incoming calls, and Pepper does not disclose or suggest that the system of Pepper is anything other than complete and useful as disclosed and does not suggest that the system of Pepper can be improved upon. Accordingly, any motivation to make the combination suggested by the Office Action can only have been found in the present application. Therefore, the rejections of **claims 25-29**, as well as that of **claims 1-9**, are based on impermissible hindsight.

For at least the foregoing reasons, **claim 25**, as well as **claims 26-29**, which depend therefrom, is not anticipated and is not obvious in light of Pepper and Wise.

In regard to **claim 26**, the Office Action asserts that Pepper and Wise disclose the system of **claim 25** wherein the message unit conservator is operative to determine the current message unit ration state based on a current opportunity cost measured in terms of remaining message units from a basic allotment of message units in a message unit allocation. In support of this assertion, the Office Action directs the attention of the Applicants to column 1, line 61 - column 2, line 10.

However, as indicated above, the cited portion of Wise is directed toward a user placing an outgoing call and not screening an incoming call or conserving message units. The cited portion of Wise describes a process wherein if any message units are available, they are used to place the call. If message units are not available, the call is not placed. However, Wise does not disclose or suggest a more liberal call processing policy when air time is plentiful and a more restrictive call processing policy when only a small amount of air time is available.

For at least the foregoing additional reasons, **claim 26** is not anticipated and is not obvious in light of Pepper and Wise.

With regard to **claim 27**, the Office Action again directs the attention of the Applicants to column 1, line 61 - column 2, line 10. However, it is respectfully submitted that the cited portion of Wise does not disclose or suggest determining a priority of a calling party based on a list of potential callers and determining a current message unit ration state based on a current cost of message units to the subscriber. Even if Pepper discloses screening calls, combining such disclosure with discussion of a process whereby an outgoing call is placed if prepaid air time is available and not placing a call if no prepaid time remains in an account of a caller does not disclose or suggest determining a current message unit ration state based on a current cost of message units to the subscriber. It is respectfully submitted that if no time is available in the account, there are no message units to conserve or ration.

For at least the foregoing additional reasons, it is respectfully submitted that **claim 27** is not anticipated and is not obvious in light of Pepper and Wise.

With regard to **claim 28**, the Office Action again asserts that the combination of Pepper and Wise discloses the system of **claim 25** wherein the message unit conservator is operative to perform the functions detailed in **claim 28**. In support of this assertion, the Office Action again directs the attention of the Applicants to column 1, line 61 -

column 2, line 10. However, it is respectfully submitted that this discussion of allowing an outgoing call to proceed if air time is available and preventing the outgoing call from proceeding if a subscriber or user's account is no longer credited with prepaid air time does not disclose or suggest requesting a current message unit billing category associated with the subscriber from a billing system, receiving the current message unit billing category and using the current billing category to determine the current message unit ration state based on a current cost of message units to the subscriber as recited in **claim 28**. The cited portion of Wise describes simply placing the call if a balance of air time units or minutes is available and not placing the call if there is a zero balance of air time in the subscriber's account. The cited portion of Wise does not disclose or suggest or consider a current message unit billing category or using a current billing category to determine a current message unit ration state based on a current cost of message units to a subscriber.

For at least the foregoing additional reasons, **claim 28** is not anticipated and is not obvious in light of Pepper and Wise.

Regarding **claim 29**, the Office Action again directs the attention of the Applicants to Wise (column 1, line 61 - column 2, line 10). However, even in combination with Pepper, the cited portion of Wise does not disclose or suggest a message unit conservator that is operative to request information from a billing system regarding used message units in a current message unit billing category or an allotment of message units in the current message unit category associated with the subscriber, to receive the information regarding the used message units and use the information regarding the used message units to determine the current message unit ration state. Wise does not recognize, disclose or suggest message unit billing categories or allocations of message units in various message unit billing categories. The cited portion of Wise is only concerned with whether or not prepaid air time minutes are available. Further in this regard, arguments similar to those submitted in support of **claims 25-28** are submitted in support of **claim 29**.

For at least the foregoing additional reasons, **claim 29** is not anticipated and is not obvious in view of Pepper and Wise.

**Claims 10-15** and **30** were rejected under 35 U.S.C. 103(a) as being unpatentable over Pepper in view of Steele.

However, in explaining the rejections of **claims 10** and **30**, the Office Action stipulates that Pepper fails to disclose the method of managing air time comprising

determining a current air time ration state associated with the subscriber and processing the call request according to the current ration state. The Office Action relies on Steele for this disclosure and directs the attention of the Applicants to column 5, lines 25-28.

Column 5, lines 25-28, discuss restricted bins which would include telephone numbers and addresses to which the user has limited access. This could include local calls, favorite games, URLs, etc. The restrictions could be time based (calls are allowed or prohibited during specific times of day) or air time based (user is allowed to use the restricted bin for a specific number of air time minutes). Each bin would also have a flag to allow soft or hard restriction.

However, it is respectfully submitted that even if the air time (bins) of Steele are to be interpreted as being related to a current ration state, it is respectfully submitted that the bins of Steele are related to outgoing calls. For example, see column 6, line 5, through column 7, line 3; FIG. 2, reference numeral 100; and column 7, lines 4-46. Therefore, it is respectfully submitted that the combination of Pepper and Steele does not disclose or suggest processing a call request from a calling party according to the current ration state associated with a subscriber and the priority of the calling party.

For at least the foregoing reasons, **claim 10**, as well as **claims 11-24**, which depend therefrom, and **claim 30** are not anticipated and are not obvious in light of Pepper and Steele taken alone or in any combination.

Additionally, with regard to **claim 15**, it is respectfully submitted that, while the cited portions of Steele discuss air time, time limits and exceeding time limits, Steele does not disclose or suggest determining a remaining air time allocation period fraction associated with the subscriber, determining a remaining air time allocation fraction associated with the subscriber or determining a remaining air time allocation period to air time allocation air time fraction ratio associated with the subscriber. Therefore, it is respectfully submitted that the combination of Pepper and Steele does not disclose or suggest determining the current air time ration state based on the air time allocation period to air time allocation fraction ratio. For example, please compare the disclosure found, for example, on page 8, line 20 -- page 9, line 2, with the subject matter cited against **claim 15** in the Office Action.

For at least the foregoing additional reasons, it is respectfully submitted that **claim 15** is not anticipated and is not obvious in light of Pepper and Steele taken alone or in any combination.

Even if Pepper and Steele include all the subject matter for which they are relied,

and even if the subject matter of the references can be combined, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination (MPEP 2143.01(III)). It is respectfully submitted that motivation to make the suggested combination can only have been gleaned from the present application and the rejection of **claims 10-15** are based on impermissible hindsight.

For at least the foregoing additional reasons, independent **claims 10** and **30**, as well as **claims 11-24**, which depend from **claim 10**, are not anticipated and are not obvious in view of Pepper and Steele taken alone or in any combination.

**Claims 6-18** and **21-24** were rejected under 35 U.S.C. 103(a) as being unpatentable over Pepper in view of Steele and further in view of Wise.

However, **claims 16, 18** and **21** depend from **claim 10** and are not anticipated and are not obvious for at least that reason.

Additionally, the Office Action stipulates that the combination of Pepper and Steele fails to disclose that determining a current air time ration state associated with the subscriber comprises calculating the current air time ration state based on a function of remaining allocated air time in an air time allocation period and connecting the calling party to a message service if the current ration state is at a maximum restriction and relies on Wise for such disclosure.

However, as explained above, Wise does not disclose or suggest screening incoming calls but, rather, discusses processing outgoing calls placed by a prepaid cellular phone user (CPU). Therefore, it is respectfully submitted that Wise does not disclose or suggest connecting a calling party (i.e., separate from the subscriber) to a message service if the current ration state is at a maximum restriction and the priority level of the calling party is low as recited in **claim 21**. Column 1, line 58, -- column 2, line 20, discuss processing an outgoing call generated by the subscriber or CPU, as does column 3, line 15 -- column 4, line 44, except that column 3, lines 40-43, discuss either blocking incoming calls or having the calling party pay for the incoming call. Furthermore, it is respectfully submitted that while Wise discusses prepaid air time and deducting minutes from the cellular phone user's account (e.g., column 2, lines 8-9), it is respectfully submitted that Wise does not disclose or suggest calculating a current air time ration state based on a function of remaining allocated air time as recited in **claim 16** or determining a current time associated with the subscriber, determining a remaining air time allocation associated with the current time and determining the

current air time ration state as a function of the remaining air time allocation as recited in **claim 18**.

For at least the foregoing additional reasons, **claims 16, 18 and 21** are not anticipated and are not obvious in light of Pepper, Steele and Wise taken alone or in any combination.

Additionally, there is no motivation in the art for combining the cited portions of Pepper, Steele and Wise.

Even if Pepper, Steele and Wise disclose or suggest the subject matter for which they are relied, and even if the references can be combined, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. It is respectfully submitted that motivation to make the suggested combination can only have been gleaned from the present application and the rejection of **claims 16, 18 and 21** are based on impermissible hindsight.

For at least the foregoing additional reasons, **claims 16, 18 and 21** are not anticipated and are not obvious in light of Pepper, Steele and Wise taken alone or in any combination (MPEP 2140.01(III)).

In explaining the rejection of **claim 17**, the Office Action stipulates that the combination of Pepper and Steele fails to disclose wherein determining the current air time ration state associated with the subscriber comprises calculating the current air time ration state based on a current subscriber cost of air time and directs the attention of the Applicants generally to FIG. 2E of Wise for this disclosure. However, it is respectfully submitted that FIG. 2E of Wise is unrelated to determining a ration state. Instead, FIG. 2E merely determines whether an outgoing call is to be charged according to a local, long distance or international billing rate and, if prepaid air time minutes are available (step 403), allows the call to be placed and deducts units (step 406) from the subscriber's account accordingly. Therefore, the assertion of the Office Action that Wise discloses wherein determining the current air time ration state associated with the subscriber comprises calculating the current air time ration state based on a current subscriber cost of air time is incorrect. Wise is not concerned with rationing air time. If air time is available, it is used. If air time is not available, there is no air time to ration.

For at least the foregoing additional reasons, **claim 17** is not anticipated and is not obvious in light of Pepper, Steele and Wise.

With regard to **claim 24**, the Office Action directs the attention of the Applicants

to column 1, lines 42-48, and column 10, lines 9-24, of Wise. However, column 1, lines 42-48, of Wise merely indicate that under certain circumstances, the use of a cellular telephone is only desired for short periods of time and, wherein the establishment of an account with the local cellular company would be difficult to accomplish, it would be desirable if a system is provided which allows a user to rent a cellular phone and prepay a certain dollar amount corresponding to a predetermined amount of cellular air phone time. Column 10, lines 9-24, include a portion of claim 24 of Wise and do not disclose or suggest requesting billing information regarding the subscriber from a billing system comprises requesting information regarding a current cost to the subscriber of air time. Since the cited portions of Wise do not include the subject matter for which they are relied, it is respectfully submitted that **claim 24** is not anticipated and is not obvious in light of Pepper, Steele and Wise taken alone or in any combination.

**Claims 19 and 20** were rejected under 35 U.S.C. 103(a) as being unpatentable over a combination of four references, Pepper, Steele, Wise and Chow.

However, **claims 19 and 20** depend from **claim 18**, which depends from **claim 10**. In this regard, arguments similar to those submitted in support of **claims 10 and 18** are submitted in support of **claims 19 and 20**.

Even if the four references can be combined, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination (MPEP 2143.01(III)).

It is respectfully submitted that the motivation to combine the four references can only have been found in the present application. Therefore, it is respectfully submitted that the rejection of **claims 19 and 20** are based on impermissible hindsight.

For at least the foregoing additional reasons, **claims 19 and 20** are not anticipated and are not obvious in light Pepper, Steele, Wise and Chow.

#### **Telephone Interview**

In the interests of advancing this application to issue the Applicant(s) respectfully request that the Examiner telephone the undersigned to discuss the foregoing or any suggestions that the Examiner may have to place the case in condition for allowance.

### CONCLUSION

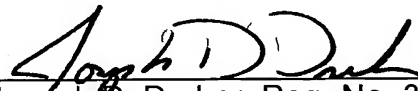
**Claims 1-30** remain in the application.

For at least the foregoing reasons, it is respectfully submitted that the application is in condition for allowance. Accordingly, an early indication thereof is respectfully requested.

Respectfully submitted,

FAY, SHARPE, FAGAN,  
MINNICH & McKEE, LLP

August 30, 2006  
Date

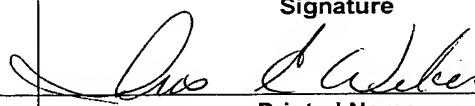
  
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#### CERTIFICATE OF MAILING

Under 37 C.F.R. § 1.8, I certify that this Amendment is being

- ☒ deposited with the United States Postal Service as First Class mail, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.
- ☐ transmitted via facsimile in accordance with 37 C.F.R. § 1.8 on the date indicated below.
- ☐ deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated below and is addressed to Mail Stop Amendment, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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<b>Date</b> <b>August 30, 2006</b>	<b>Printed Name</b> <b>Iris E Weber</b>

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